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Via ECFS

Ms. Marlene H. Dortch, Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

**Re: MB Docket No. 14-261 -- *Promoting Innovation and Competition in the Provision of Multichannel Video Programming Distribution Services*
Ex Parte Communication Pursuant to 47 C.F.R. §1.1206**

Dear Ms. Dortch:

On October 7, 2015, Alkiviades David, CEO of FilmOn X, LLC ("FilmOn X"); Ryan Baker and Scott Malzahn, Baker & Marquart LLP, FilmOn X's external counsel; and the undersigned counsel to FilmOn X met with the following persons:

- William T. Lake, Chief, Media Bureau; Susan Aaron, Office of General Counsel; Kathryn Berthot, Media Bureau; Michelle Carey, Media Bureau; Jonathan Levy, Office of Strategic Planning and Policy Analysis; Jonathan Mark, Media Bureau intern; Mary Beth Murphy, Media Bureau; Nancy Murphy, Media Bureau; Brendan Murray, Media Bureau; Susan Singer, Media Bureau; Raphael Sznajder, Media Bureau intern; David Waterman, Office of Strategic Planning and Policy Analysis.
- Valery Galasso, Policy Advisor, Office of Commissioner Rosenworcel.

On October 8, 2015, Alkiviades David, Ryan Baker, Scott Malzahn and the undersigned counsel to FilmOn met with the following persons:

- Commissioner Ajit Pai; Matthew Berry, Chief of Staff, Office of Commissioner Ajit Pai.
- Robin Colwell, Chief of Staff and Senior Legal Advisor, Media, Office of Commissioner Michael O'Rielly.

- Gigi Sohn, Counselor to the Chairman; Maria Kirby, Legal Advisor, Media, Cons. & Gov. Affairs; Jessica Weinstein, Law Clerk, Office of Chairman Tom Wheeler.

The purpose of these meetings was to discuss recent judicial developments regarding the cable system copyright license and the impact of those judicial developments on the Commission's proposal in this proceeding to expand the definition of a Multichannel Video Programming Distributor ("MVPD") in the Communications Act to include certain Internet-based distributors of video programming. In particular, FilmOn X discussed a recent ruling by the Honorable George H. Wu, U.S. District Court for the Central District of California, holding that the cable system compulsory copyright license set forth in 17 U.S.C. Section 111(c) is available to FilmOn X as an Internet-based retransmission service. *See Fox Television Stations, Inc. v. AereoKiller*, Case No. CV 12-6921, __ F. Supp.3d __ (2015), 2015 WL 4477797 (C.D. Cal. July 16, 2015).

FilmOn X urged the Commission to move forward expeditiously to adopt the item and to adopt appropriate rules to facilitate regulatory parity and new competition. FilmOn X also emphasized that adoption of the item and application of a light regulatory touch would remove barriers to entry that prevent small and nascent online video distributors, such as FilmOn X, from competing with entrenched legacy video providers and large-scale media companies, many of which have opposed the item because of their considerable market power and advantageous industry position. FilmOn X further urged that adoption of the item would spur investment and innovation, which would result in additional access to television programming, which consumers increasingly demand over the Internet. A copy of the handout summarizing FilmOn X's presentation is attached.

In accordance with Section 1.1206 of the Federal Communications Commission rules, this letter is being provided to your office, with copies being delivered via email to the persons listed below. Please contact the undersigned counsel at 202-955-3933 or Ryan Baker of Baker Marquart at 424-652-7800, if there are any questions.

Respectfully submitted,

/s/ Jonathan E. Allen

Counsel to FilmOn X, LLC

Copies (via email):

Commissioner Ajit Pai
Gigi B. Sohn
Maria Kirby
Jessica Weinstein
Matthew Berry
Robin Colwell
David Waterman
Jonathan Levy
Susan Aaron
William T. Lake
Michelle Carey
Nancy Murphy
Susan Singer
Mary Beth Murphy
Brendan Murray
Kathryn Berthot
Jonathan Mark
Raphael Sznajder



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*Promoting Innovation and Competition in the Provision of
Multichannel Video Programming Distribution Services,
MB Docket No. 14-261; October 7, 2015*

FilmOn X, LLC ("FilmOn X") is an online distributor of hundreds of channels of video programming and thousands of video-on-demand programs. FilmOn uses headends to receive, record and stream video programming to consumers in dozens of designated market areas.

FilmOn X has ceased retransmitting the signals of local TV stations pending its ongoing litigation over the applicability of the compulsory license under Section 111 of the Copyright Act to Internet-based retransmissions of such signals. FilmOn X intends to offer its service consistent with all regulatory obligations and after it has complied with any court orders or injunctions. Recently, the Central District of California ruled that FilmOn X is eligible for a compulsory license as a cable system. *See Fox Television Stations, Inc. v. AereoKiller*, Case No. CV 12-6921, __ F. Supp.3d __ (2015), 2015 WL 4477797 (C.D. Cal. July 16, 2015).

FilmOn X supports the Commission's proposed interpretation of the Communications Act's definition of "Multichannel Video Programming Distributor" ("MVPD") to include certain Internet-based distributors of multiple linear channels of video programming. This interpretation will:

- *Correct* the regulatory uncertainty that is throttling innovation and deterring investment in new video distribution technologies;
- *Promote* regulatory parity across functionally equivalent services;
- *Create* opportunities for carriage of new, independent and niche video programming services into new markets;
- *Stimulate* competition in the marketplace for the distribution of video programming by removing regulatory barriers to entry;
- *Modernize* the legacy regulatory framework to account for new technologies; and
- *Clarify* that such Internet-based retransmissions by MVPDs are permissible under the Communications Act.